



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|------------------------|---------------------|------------------|
| 10/827,466   | 04/19/2004  | Jay Andrew Herbert     | 60,298-521;266      | 2971             |
| 26/096 7590 03/26/2010<br>CARLSON, GASKEY & OLDS, P.C.<br>400 WEST MAPLE ROAD<br>SUITE 350<br>BIRMINGHAM, MI 48009 |             |                        |                     |                  |
| EXAMINER<br>WEINSTEIN, LEONARD J   |             |                        |                     |                  |
| ART UNIT<br>3746   |             | PAPER NUMBER           |                     |                  |
| MAIL DATE<br>03/26/2010  |             | DELIVERY MODE<br>PAPER |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* JAY ANDREW HERBERT, JANET BRADY and  
JOHN LLOYD JOEHNK

---

Appeal 2009-003772  
Application 10/827,466  
Technology Center 3700

---

Decided: March 25, 2010

---

Before LINDA E. HORNER, MICHAEL W. O'NEILL, and  
FRED A. SILVERBERG, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jay Andrew Herbert et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-19, 21, and 22. Appellants canceled claim 20. We have jurisdiction under 35 U.S.C. § 6(b).

*The Invention*

The claimed invention is to remotely storing and retrieving data from a compressor. Spec. 1, para. [0001].

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A sealed compressor assembly comprising:  
a compressor comprising a compressor pump unit and a motor for driving said compressor pump unit;  
a housing enclosing said compressor pump unit;  
a receiver for receiving a first wireless signal; and  
a memory unit in communication with said receiver, said memory unit for storing information relating to said compressor, said receiver and said memory unit mounted to said compressor.

*The Prior Art*

The Examiner relies upon the following as evidence of unpatentability:

|            |                    |               |
|------------|--------------------|---------------|
| Blotenberg | US 6,269,299 B1    | Jul. 31, 2001 |
| Hahn       | US 2002/0127120 A1 | Sep. 12, 2002 |

*The Rejection*

The following Examiner's rejection is before us for review:

Claims 1-19, 21, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hahn in view of Blotenberg.

*Contentions*

Appellants do not contest the Examiner's finding that Hahn discloses a sealed compressor assembly having a compressor, including a compressor pump and driving motor, and a housing enclosing the pump unit, as set forth in claim 1. Additionally, Appellants do not contest the Examiner's finding that Hahn discloses a memory unit as required by claim 1.

Appellants contend that Blotenberg fails to teach mounting a receiver to the compressor. According to Appellants, Blotenberg teaches a wireless receiver that is located away from the compressor, and that the wireless communication does not occur between a remote device and the compressor, but between two programming devices. As such, according to Appellants, Blotenberg fails to teach a wireless receiver mounted to a compressor as set forth in claim 1. Appellants contend that the Examiner erred in finding Hahn's microprocessor is analogous to a receiver because Hahn's microprocessor receives signals from the sensors. Appellants contend the Examiner erred in analogizing Hahn's microprocessor with the wireless receiver of Blotenberg. Appellants contend that any substitution of Hahn's microprocessor with Blotenberg's wireless device would destroy Hahn, change the principle operation of Hahn and Blotenberg, and prevent Hahn's microprocessor from following its intended purpose. App. Br. 4-5 and Reply Br. 1-2.

Appellants do not separately argue claims 1-19, 21, and 22. As such, claim 1 is representative. Claims 2-19, 21, and 22 will stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

## SUMMARY OF DECISION

We AFFIRM.

### OPINION

#### *Issue*

The issue before us is as follows:

Did the Examiner err in concluding that the claimed invention within claim 1 is rendered obvious by the combined teachings of Hahn and Blotenberg?

#### *Pertinent Facts*

1. Appellants' Specification fails to provide a lexicographic definition of the claim term "receiver." Spec., *passim*.
2. Hahn discloses a control 26 that receives a number of signals on the operation of the compressor via a number of sensors. Page 1, para. [0016].
3. Hahn discloses that control 26 contains a microprocessor so that if one of the monitored functions approaches a limit based on the signals received from the sensors, then the control 26 will diagnose a fault and actuate an appropriate action. In addition, control 26 can perform a variety of analyses based on the signals received from the sensors. Page 2, paras. [0018] – [0019].
4. Hahn discloses that control 26 can be embodied as control 64 that is mounted to the compressor. Hahn discloses the control 64 features an input jack 74 to permit access to the stored operational features that were received from the signals sent by the sensors. Page 2, para. [0025] and figure 2.

5. Blotenberg discloses a control and regulating system 4 that can control a compressor. The system 4 is connected to machinery 1 via feedback lines 2 and control line 3. The feedback lines 2 transmit measured values from the piece of machinery 1 to the control and regulating system 4. The control line 3 transmits adjustment commands from the control and regulating system 4 to the piece of machinery 1, such as for driving a compressor 1.2. Col. 5, ll. 18-30.
6. Blotenberg discloses a programming line 6 that connects the control and regulating system 4 to a first programming device 5. Col. 5, ll. 32-33.
7. Blotenberg discloses if the programming within the control and regulating system 4 needs to be changed, the program is first changed in programming device 5 and then transmitted into the memory 7 of the control and regulating system 4 via programming line 6. Col. 5, ll. 35-40.
8. Blotenberg discloses that programming line 6 transmits the current operating data of the piece of machinery 1 to the first programming device 5. Col. 5, ll. 41-43.
9. Blotenberg discloses that a long-distance data line 13 connects the first programming device 5 to a second programming device 10 located at a central location 14. Col. 5, ll. 47-50.
10. Blotenberg discloses that this long-distance data line 13 may be in the form of a wireless connection. Col. 5, ll. 50-53.
11. Blotenberg discloses that the long-distance data line 13 coordinates all control commands and displays between the two programming units 5 and 10. Col. 5, ll. 54-56.

12. Blotenberg discloses that the long-distance data line 13 permits programming commands initiated at the second programming device 10 to be transmitted and received by the first programming device 5. Col. 5, ll. 56-60.
13. Blotenberg discloses that first programming device 5 will process those transmitted commands as if those commands had been entered directly into first programming device 5. Col. 5, ll. 60-62.
14. Blotenberg discloses that if no programmer is at the vicinity of first programming device 5, then first programming device 5 is reduced to only being able to receive control commands from the second programming device 10 and to implement such commands. Col. 6, ll. 6-16.

#### *Analysis*

Hahn's control 26 receives signals. Fact 2. A person having ordinary skill in the art would understand that a receiver is a device that receives signals. As such, a person having ordinary skill in the art would consider Hahn's control 26 a receiver in the broadest reasonable sense. Appellants do not provide a lexicographic definition of a receiver to counter this presumption. Fact 1. While, Hahn mentions that control 26 also has microprocessor functionality, this does not disprove the fact that Hahn's control 26 receives signals. Fact 3. Moreover, Appellants' Specification does not limit the receiver 18 as not having processing functionality, nor does claim 1. Any receiver has to have some processing functionality because the receiver needs to process the signals that are received into a form that is understood by the other components that will receive the output from the receiver and process the output accordingly. Moreover, Hahn's

control 26, when embodied as control 64, is mounted to the compressor and has an input jack 74 to permit access to the stored information. Fact 4. Accordingly, Appellants' arguments that Hahn does not disclose a receiver mounted to a compressor are unconvincing.

The difference between Hahn's control 26 and the claimed receiver, set forth in claim 1, is that Hahn's control 26 does not receive signals wirelessly. Blotenberg teaches controlling a piece of machinery such as a compressor. Fact 5. Blotenberg teaches communication lines transmit commands and operation status between the machinery 1, the control and regulating system 4, and the programming devices 5 and 10, and permit coordination of all control commands between these devices. Facts 6-9 and 11. Blotenberg explicitly teaches that one communication line can be wireless. Fact 10. Blotenberg teaches that commands entered at programming device 10 will be treated by the control and regulating system 4, as if entered at the programming device 5. Fact 13. Moreover, Blotenberg teaches that all entry of commands could be performed at programming device 10. Fact 14. Since Blotenberg explicitly teaches that the communication line 13 connects programming device 10 to the location where the machinery 1 is located, then Blotenberg teaches wirelessly sending commands from a central site 14 to a remote site. As such, Blotenberg teaches receiving wireless signals at the location of the machinery. In order receive such signals, a receiver capable of receiving such signals would have to be located in the same vicinity as the machinery 1. Therefore, Blotenberg teaches a receiver for receiving wireless signals as set forth in claim 1.



In *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 415, and discussed circumstances in which a patent might be determined to be obvious. One of these circumstances is when a claim is directed to a structure already known in the prior art that has been altered by the mere substitution of one element for another element known in the field, and where the combination claim does no more than yield a predictable result. *Id.* at 416.

Substituting the wireless capability based on the teachings of Blotenberg for the input jack 74 could have been reasonably predicted to yield the result of permitting Hahn’s control 64 to receive a wireless signal to initiate the retrieval of the stored information in control 64 instead of requiring access to the input jack 74. Likewise, such a substitution would permit Hahn’s control 64 to receive commands wirelessly as taught by Blotenberg.

## CONCLUSION

In view of the foregoing reasons, Appellants’ contentions are unconvincing to demonstrate that the Examiner erred in concluding that the combined teachings of Hahn and Blotenberg render obvious the claimed subject matter set forth in claim 1. Claims 2-19, 21, and 22 fall with claim 1.

## DECISION

The Examiner’s decision to reject claims 1-19, 21, and 22 as obvious over Hahn and Blotenberg is affirmed.

Appeal 2009-003772  
Application 10/827,466

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

Klh

CARLSON, GASKEY & OLDS, P.C.  
400 WEST MAPLE ROAD  
SUITE 350  
BIRMINGHAM, MI 48009